IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

RCRev..No. 34 of 2007

RCA.1/2000 of THE RENT CONTROL PAPELLATE AUTHORITY (ADDL. DISTRICT COURT), THALASSERY
RCP.167/1997 of THE RENT CONTROLLER (MUNSIFF COURT), THALASSERY
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REVN. PETITIONER/RESPONDENT/RESPONDENT

NARANGAT DAMODARAN, S/O. KUMARAN,
AGED 62 YEARS, BUSINESS, RESIDING AT 'VALSALAYAM',
KADIRUR AMSOM, PONIAM DESOM, P.O.PONNIAM WEST,
THALASSERY TALUK, KANNUR DISTRICT.

BY ADV. SRI.R.SURENDRAN

RESPONDENTS: APPELLANTS/PETITIONERS
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1. K.LAKSHMI, W/O. LATE ACHUTHAN,
AGED 58 YEARS, RESIDING AT 'ANIMESH',
KUNDUCHIRA, KADIRUR AMSOM, PONIAM DESOM,
P.O.PONNIAM WEST, THALASSERY TALUK,
KANNUR DISTRICT.

2. C.N.ANILA, D/O. LATE ACHUTHAN,
AGED 42 YEARS, RESIDING AT PALORATH HOUSE,
P.O.PONNIAM EAST, THALASSERY TALUK,
KANNUR DISTRICT.

3. N.ANEESH, S/O. LATE ACHUTHAN,
AGED 40 YEARS, RESIDING AT 'ANIMESH',
KUNDUCHIRA, KADIRUR AMSOM, PONIAM DESOM,
P.O.PONNIAM WEST, THALASSERY TALUK,
KANNUR DISTRICT.

4. N.SANILA, D/O. LATE ACHUTHAN,
AGED 38 YEARS, RESIDING AT PARAL,
KUTHUPARAMBA, THALASSERY TALUK,
KANNUR DISTRICT.

5. N.LEENA, D/O. LATE ACHUTHAN,
AGED 36 YEARS, RESIDING AT 'ANIMESH',
KUNDUCHIRA, KADIRUR AMSOM, PONIAM DESOM,
P.O.PONNIAM WEST, THALASSERY TALUK,
KANNUR DISTRICT.

6. N.LISSY, D/O. LATE ACHUTHAN,
AGED 34 YEARS, RESIDING AT 'ANIMESH',
KUNDUCHIRA, KADIRUR AMSOM, PONIAM DESOM,
P.O.PONNIAM WEST, THALASSERY TALUK,
KANNUR DISTRICT.

BY ADV.MR.A. SUDHI VASUDEVAN (CAVEATOR)

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 02/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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R.C.R.NO. 34 OF 2007

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DATED THIS THE 2ND DAY OF FEBRUARY 2007

ORDER

Udayabhanu,J.

The revision petitioner is the tenant under orders of eviction as per the order of the appellate authority on the ground under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (Act 2 of 1965) (for short 'the Act'). The case of the petitioners is that the 5th petitioner, daughter of the original landlord wanted to start a P.G. coaching centre in the premises. PW1, 5th petitioner is a post graduate in Economics and is also a trained teacher having a B.Ed.degree as well. She has earlier worked in a school for sometime. The respondent/revision petitioner is running a provision store in the premises from 1978 onwards on a rental of Rs.25/- per month.

2. The tenant had contended that PW1 is employed and that she is not competent to start a P.G.coaching centre and that the petitioners are having another vacant premises in their possession, i.e.the upstairs of the premises in which the petition schedule

premises is situated. The appellate authority on meticulous consideration of the evidence adduced has found that PW1 is a post graduate having teaching experience and that the premises is suitable for conducting coaching centre and that she was not employed at the time. It was also found that the upstair portion which was in occupation of A.K.G.Memorial Club has not been surrendered to the petitioners although the library has been shifted to a building situated nearby. The contention that PW1 has not produced her degree certificate etc. is raised herein also. The appellate authority has rejected the above contention pointing out that there was no serious dispute by the respondent with respect to the academic qualification of PW1. We find that unless the respondent has raised a specific contention in this regard, the landlord is not bound to produce certificates of academic qualifications etc.before the court. It is also pertinent to note that the respondent-tenant had contended that PW1 is working as a teacher in a school. It has also to be noted that no objective evidence was adduced as to the contention that the petitioners are having vacant possession of the upstair portion of the building. The appellate authority has found that the evidence of PW1 is trustworthy as to the case that the upstair portion has not been surrendered. It was also found that the revision petitioner/tenant is

not entitled to the protection of second proviso to Section 11(3) of the Act as he has landed property extending about 1.35 acres. There is no objective evidence adduced as to the non-liability of alternative premises in the area. In the circumstances, we find that there is absolutely no ground at all to interfere in the findings of the appellate authority. In the result, the revision petition is dismissed in limine.

Considering the fact that the revision petitioner is running a provision store in the premises, he is granted four months time to vacate the same on condition that he shall remit the entire arrears of rent, if any, and continue to remit the rent due and file an affidavit before the execution court within 20 days from today undertaking as above and that the premises shall be vacated on or before 2-6-2007.

K.A.ABDUL GAFOOR
JUDGE

K.R.UDAYABHANU,
JUDGE

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